

June 11, 2002

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Environmental Protection Agency
Office of Environmental Information, Mail Code 2842T
1200 Pennsylvania Avenue, NW
Washington, DC 20406
Attention: Docket ID No. OEI-10014

RE: Comments on EPA's Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information, published at 67 FR 83

The IPC - Association Connecting Electronic Industries - is pleased to submit the following comments in response to the Environmental Protection Agency's (EPA's) Draft Information Quality Guidelines (draft guidelines), published in the Federal Register at 67 FR 21234. IPC is the national trade association for the electronic interconnection industry, and represents more than 2,500 member companies who manufacture printed circuit boards and attach electronic components, such as computer chips.

Printed circuit boards are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. The industry is vital to the U.S. economy. Without printed circuit boards, you would not be able to start your car, watch television, answer a telephone, turn on a light switch, or brew a cup of coffee. There would be no Internet, no e-mail, no VCRs or Nintendo. The industry employs more than 400,000 people and exceeds \$44 billion in sales. Industry members operate in every U.S. state and territory.

Although IPC members include electronic giants, such as Intel, Hewlett Packard, and IBM, sixty percent of IPC members meet the Small Business Administration's definition

of “small business.” The typical IPC member has 100 employees on average and has a profit margin of less than four percent.

IPC is concerned that EPA’s efforts to develop data quality guidelines will not adequately ensure the quality of information used or disseminated by the agency as intended by the Office of Management and Budget’s (OMB’s) Guidelines on Information Quality (implementing guidelines) released in January 2001. The use of sound science to produce information that maintains its utility, objectivity and integrity is the cornerstone of good policy development. Ensuring the quality of data used during the regulatory development process will reduce the likelihood of EPA promulgating regulations that are not based on sound science and economics. Regulations that are not based on sound analysis of high quality data often impose an unnecessary burden on facilities, especially smaller companies with limited resources, without providing a real environmental benefit.

IPC appreciates the opportunity to comment on EPA’s draft guidelines. We have outlined below specific concerns with the agency’s draft data quality guidelines.

I. Implementation of EPA’s Data Quality Guidelines

EPA’s draft guidelines have been proposed to comply with OMB’s implementing data quality guidelines¹ that require federal agencies to develop and implement their own procedures for meeting OMB’s data quality standards. In its implementing guidelines, OMB states, “*Agencies shall treat information quality as integral to every step of an agency’s development of information, including creation, collection, maintenance and dissemination.*”² While EPA’s draft guidelines provide a general overview of the agency’s plan to ensure the quality of information it disseminates, the draft guidelines lack sufficient details to ensure effective implementation of OMB’s implementing

¹ 67 Federal Register 8451

guidelines. IPC stresses the need for EPA's guidelines to provide detailed procedures for reviewing and substantiating the quality of information before it is distributed or used. In addition, agency guidelines should establish more detailed procedures for public challenge to information in noncompliance with the guidelines.

In the implementing guidelines, OMB states that federal agencies must "*ensure that their administrative mechanisms satisfy the standards and procedural requirements in the new agency guidelines.*"³ EPA's draft guidelines state that the agency intends to use existing policies and procedures to ensure the quality, objectivity, utility and transparency of information disseminated by the agency. Exactly how EPA policies and procedures will be incorporated into the draft guidelines remains uncertain. EPA should outline in greater detail the current programs and policies the agency intends to integrate into its guidelines and explain how the specific policies will be used to address the requirements outlined in OMB's implementing guidelines.

II. Data Quality Assurances

OMB's implementing guidelines on data quality are intended to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by federal agencies. Ensuring the usefulness of the information to the user, presenting it in an accurate and unbiased manner and protecting the information from unauthorized access or revision are criteria established as the foundation of OMB's implementing guidance. OMB states, "*that a reproducibility standard is practical and appropriate for information that is considered influential.*"⁴ EPA must ensure the reproducibility standard and peer review mechanism within the guidelines are strong and abided by throughout the agency.

² 67 Federal Register 8459

³ 67 Federal Register 8453

⁴ 67 Federal Register 8455

Transparency and Reproducibility of Data Must Be Ensured

In its implementing guidelines OMB states, “*the purpose of the reproducibility standard is to cultivate a consistent agency commitment to transparency about how analytic results are generated: the specific data used, the various assumptions employed, the specific analytic methods applied, and the statistical procedures employed.*”⁵ OMB’s implementing guidelines further state, “*Agency guidelines shall require sufficient transparency about data and methods that an independent reanalysis could be undertaken by a qualified member of the public.*”⁶ Failure to ensure the reproducibility of data and analytic results inhibits the public’s ability to thoroughly review proposed regulations and ensure the quality of information being used by the agency.

IPC commends EPA’s intent to make available the sources of the data used, assumptions employed, analytic methods applied and statistical procedures as stated in the draft guidelines. This is an important step towards ensuring the reproducibility of EPA’s data analysis and conclusions reached when developing regulations.

In the past, IPC has experienced problems with the reproducibility of agency data. EPA used extensive data modeling and statistical methodologies during the development of its recently proposed Metal Products and Machinery (MP&M) effluent limitation guidelines⁷. In attempting to conduct an adequate and thorough review of the proposed rule, industry was repeatedly frustrated by the unavailability of key supporting data. When the proposed rule was first published only original data and results from EPA’s modeling were available in the public docket. Since no detailed explanation of the agency’s analytic models were available to the public, affected entities were unable to reproduce EPA’s analysis or conclusions based on the information available. EPA finally

⁵ 67 Federal Register 8456

⁶ 67 Federal Register 8456

⁷ 66 Federal Register 423

made portions of its data modeling available after repeated requests by affected individuals.

EPA's thorough implementation of the reproducibility standard as outlined in its draft guidelines would ensure that problems like this would not occur in the future. By ensuring the reproducibility of data, EPA would promote thorough public review of proposed regulations allowing final rules to be based on sound analysis.

EPA Should Strengthen the Guideline's Peer Review Mechanism

OMB states in their implementing guidelines, *"If data and analytic results have been subjected to formal, independent, external peer review, the information may generally be presumed to be of acceptable objectivity."*⁸ EPA's intent to use the agency's existing "Peer Review Policy" to satisfy the peer review component of OMB's implementing guidelines is not sufficient. Existing procedures are inadequate because not all agency information used or disseminated by the agency is currently peer reviewed.

For example, a recent EPA rule where peer review was necessary but not used was the agency's rule lowering the reporting threshold for lead and lead compounds under the Toxic Release Inventory (TRI). EPA used persistent, bio-accumulative and toxic (PBT) criteria to justify lowering the reporting threshold for lead from 25,000 pounds to 100 pounds. EPA did not subject the use of PBT criteria, which was developed to evaluate synthetic organic chemicals, for evaluating metals to an external, independent peer review before using it to develop the lowered reporting thresholds for lead. The agency did, however, recognize the need for peer review by the Science Advisory Board (SAB) stating, *"...EPA believes that it would be appropriate to seek external scientific peer*

⁸ 67 Federal Register 8459

⁹ 66 Federal Register 4518

*review from its Science Advisory Board, and EPA intends to do so”*⁹ but only after the rule was finalized.

IPC is seriously concerned that EPA’s policy for peer review gives the agency too much discretion as to what information is peer reviewed and recommends EPA establish a standardized process for peer review. Applying a stringent peer review mechanism for information used by the agency will result in rules that are acceptable to OMB. EPA must follow OMB’s implementing guidelines and subject information used for agency decisions to peer review by an independent, external panel to ensure its quality and objectivity.

However, OMB guidelines state that if an affected person can make a persuasive argument that the result of an independent review is faulty, that outcome can be invalidated. EPA failed to address this issue in their draft guidelines. IPC urges EPA to include in their data quality guidelines a mechanism that ensures an affected individual can rebut peer-reviewed information.

III. Exemptions From Data Quality Guidelines

OMB’s implementing guidelines were intended to raise the level of objectivity, utility and integrity of all information disseminated by federal agencies. IPC is seriously concerned EPA is attempting to exclude vast amounts of information from being subjected to the guidelines. EPA’s limited applicability of the guidelines would undermine the very intent of OMB’s implementing data quality guidelines by not subjecting all information disseminated and used by the agency to higher quality standards.

Public Filings Exemption Undermines Data Quality Efforts

While IPC understands certain information gathered by EPA through public filings may warrant exemption, wholesale exclusion of all public filings from the guidelines is inappropriate. EPA's exemption of public filings required by statutes and regulations, such as the Toxic Release Inventory, from compliance with the data quality guidelines is unacceptable. Failing to subject this information to the quality standards established in the guidelines will have an adverse effect on the quality of information the agency is required by law to disseminate to the public.

EPA avoids the intended goal of OMB's implementing guidelines by suggesting that required public filings, such as TRI, are not "disseminated" by the agency. EPA states in the draft guidelines that the agency considers information disseminated "...*if EPA distributes information prepared or submitted by an outside party in a manner that reasonably suggests that EPA endorses or agrees with it...*"¹⁰ When the public accesses TRI data on the EPA website or through agency publications, the public may reasonably believe that EPA endorses the information it has released and posted on their website or published in agency reports.

EPA disseminates environmental data gathered under the TRI, and other public filings, to the public through the agency's information management systems. EPA specifically states in their draft guidelines that "*providing and facilitating access to information about local environmental issues and conditions...*"¹¹ gives the public the ability to use the information in their communities. EPA's draft guidelines further state that city planners, homeowners, teachers, engineers and community activists use information

¹⁰ Environmental Protection Agency, "Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency." Section 1.2 (Page 14).

provided by the agency.¹² By not subjecting this information to the guidelines, EPA is doing a disservice to the public by providing inaccurate information that will be used on the job, in schools or in communities. Faulty information can result in the public misallocating valuable resources to deal with imaginary environmental problems, while overlooking real environmental dangers. If information is disseminated to the public for use, as the agency infers, then that data must comply with the data quality guidelines.

Exemption of Information Used During Rulemaking

Information used during the rulemaking process, both completed and ongoing, makes up much of the information used by federal agencies. EPA has indicated the agency's data quality guidelines will not apply to information in proposed rulemakings, and that alleged errors would be handled only through the rule's notice and comment process. It is imperative that information used during the rulemaking process complies with the data quality standards established in the guidelines to ensure that all information used in developing regulations is of high quality.

OMB's implementing guidelines state that agencies shall facilitate public review by establishing an administrative mechanism for affected individuals to seek and obtain timely correction of information that does not comply with the data quality standards¹³. Relying on the rulemaking process for correction of bad information is not timely as required by OMB since changing incorrect data during the rulemaking process can be an onerous and often time-consuming process. The rulemaking process can take several years to reach completion. Furthermore, the actual time afforded to affected individuals

¹¹ Environmental Protection Agency, "Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency." Background and Discussion, Section 2.3 (Page 2).

¹² Environmental Protection Agency, "Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency." Background and Discussion, Section 2.4 (Page 3).

¹³ 67 *Federal Register* 8459

to identify and file for correction of bad information during this process is limited to public comment periods, some as short as 30 days.

IPC is further concerned that by excluding data used during a rulemaking, affected individuals may not have an opportunity to comment appropriately if faulty data was embedded in the models used to develop the proposed rule. If the data used in EPA models was faulty then the analytic results used during the rulemaking would also be flawed. The public would only have an opportunity to comment on the flawed modeling results presented by the agency, instead of models that represent reality. Information and models used to develop rules must be subjected to the data quality guidelines regardless of whether or not that information is used in a rulemaking to ensure correct information is used in all EPA actions. This will further ensure the public an opportunity to perform a thorough review of the data and analytic results used to develop the proposed rule.

IPC urges EPA to apply all information used during the rulemaking process to the data quality guidelines, including subjecting information to the data quality petition process if affected individuals identify incorrect information.

IV. Data Quality Petition Process

OMB's implementing guidelines state that a correction process ensuring a timely, streamlined process to recognize and correct identified errors must be provided for affected individuals. IPC is concerned EPA's current process does not meet the level of assurance detailed in OMB's implementing guidelines. EPA's draft guidelines do not provide sufficient details of how the agency will implement the petition process, establishes no timeframe for complaint resolution, and provides no mechanism for public notification. EPA must establish a firm set of procedures for contesting information to ensure successful correction of bad information as intended by OMB's guidelines.

EPA Should Include a Timeframe for Complaint Resolution

OMB's implementing guidelines state, "*Agencies shall specify appropriate time periods for agency decisions on whether and how to correct the information, and agencies shall notify the affected persons of the corrections made.*"¹⁴ EPA currently offers no timeframe for the agency's complaint resolution mechanism. Establishing a specific timeframe for the complaint process is essential to ensure timely correction of inaccurate information. Without establishing a timeframe the process is too open-ended and the agency has the ability to avoid complaints altogether. IPC urges EPA to develop a reasonable timeframe for processing complaints to ensure a timely and informative response to all petitioners and that appropriate corrections are made.

OMB's implementing guidelines do not indicate the establishment of any time limit for affected individuals to identify and seek correction of faulty information. EPA's draft guidelines did not directly suggest any deadlines for petitions. However, EPA did allude that the agency may not consider data quality petitions made during a rulemaking that are submitted after the comment period. Since the intent of the petition process is to ensure bad information is corrected, IPC further recommends that no deadline be established for an affected individual to file a complaint.

Public Should Be Notified of Complaint

The public should know if a complaint has been filed alleging certain information to be flawed. Public notification would ensure that individuals using the information would not rely on data that may be inaccurate and allows them to scrutinize the information more carefully to ensure its validity. EPA does not identify in their draft guidelines any mechanism to notify the public that a complaint was filed on certain information. IPC

¹⁴ 67 Federal Register 8459

urges EPA to provide public notice when a complaint is filed with the agency citing that certain information could be incorrect. Furthermore, complaint notification should be disseminated to the public in the same fashion the original information was disseminated by EPA to ensure that those who obtained the information originally receive notice of its alleged inaccuracy.

Retroactive Application for Information Used After October 1, 2002

OMB's implementing guidelines are intended to apply to information disseminated or used on or after implementation of the data quality guidelines (October 1, 2002) regardless of when the information was first disseminated. EPA's draft guidelines followed OMB's implementing guidelines but failed to provide additional details of how the agency would ensure the quality of data that is produced before October 1, 2002 but disseminated or used again after implementation of the guidelines.

Everyday that a specific piece of information is used by the agency, that it continues to be posted on the website where it can be used or it continues to be made available to the public, that piece of information should be considered a new dissemination and therefore applicable to the data quality guidelines. IPC urges EPA to ensure affected individuals the right to contest information used or disseminated by the agency on or after October 1, 2002, regardless of when that information was first made available to the public or used by the agency.

Administrative Appeals Process

OMB states in their implementing guidelines that, "*if the person who requested the correction does not agree with the agency's decision (including the corrective action, if any), the person may file for reconsideration within the agency.*"¹⁵ OMB further detailed

¹⁵ 67 Federal Register 8459

that to provide an objective process the agency must “*ensure that the office that originally disseminates the information does not have responsibility for both the initial response and resolution of a disagreement.*”¹⁶

EPA’s draft guidelines do not provide sufficient information to understand how the agency plans to implement an appeals process. The draft guidelines state that the Assistant Administrator within the appropriate program office or region, along with the Office of Environmental Information (OEI), would be responsible for establishing an executive panel to review the appeal but no details are offered on the makeup of this panel. Furthermore, the draft guidelines state the panel may only offer a recommendation, leaving the final decision to the Assistant Administrator. This mechanism leaves too much discretion to the program office that has a vested interest in the outcome of the appeals process. IPC urges EPA to establish an independent administrative appeal process to review the agency’s initial decision to ensure an objective process as required by OMB.

Definition of “Affected Person”

IPC applauds EPA’s definition of an “*affected person*” as someone who “*may benefit or be harmed by the disseminated information,*”¹⁷ including persons who use information, as stated in EPA’s draft guidelines. The utility of information disseminated from agencies is an integral part of OMB’s data quality standards. Therefore, EPA took the right position by including in its definition of an “affected person,” any individuals whose utility is compromised by faulty data.

¹⁶ 67 *Federal Register* 8458

¹⁷ Environmental Protection Agency, “Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency.” Line 715, Page 22.

V. Risk Assessment

OMB's implementing guidelines state that, "*With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act (SDWA) Amendments of 1996 (42 USC § 300g-1(b)(3)(b)).*"¹⁸ The SDWA provisions call for the use of "*best available, peer-reviewed science*"¹⁹ and "*data collected by accepted methods or best available methods.*"²⁰ EPA indicated in their draft guidelines the agency's intention to adapt the SDWA principles with some changes but did not provide details of how the agency plans to incorporate the SDWA standards into their data quality guidelines. EPA must make available additional information on how the agency plans to adapt and implement the SDWA principles prior to finalization of the data quality guidelines to ensure sufficient time for public comment.

VI. Conclusion

EPA's efforts to develop data quality guidelines do not go far enough to ensure the quality of information used or disseminated by the agency as intended by OMB's implementing guidelines. The draft guidelines provided by EPA seem to offer only an outline of the agency's intended guidelines and fails to provide detailed information of how they will execute the program and ensure adherence throughout the agency. EPA must establish strong data quality guidelines that are easy to understand and that provide specific details of how the guidelines will be implemented within the agency to maximize the quality of information.

¹⁸ 67 Federal Register 8460

¹⁹ 67 Federal Register 8457

²⁰ 67 Federal Register 8457

To ensure a higher standard for data quality as intended by OMB, all information disseminated and used by the agency must be subjected to the data quality guidelines. The agency's attempt to exempt vast amounts of information, such as public filings and information used during rulemakings, would seriously undermine any attempt to strengthen data quality within the agency.

Ensuring and maximizing the quality of data used during the regulatory development process would reduce the likelihood of EPA promulgating unnecessary regulations and creating unnecessary burden on regulated entities. To produce the greatest environmental benefit, EPA would be best served to develop a strong data quality program.

IPC appreciates the opportunity to provide comments on EPA's Draft Data Quality Guidelines and we look forward to working with EPA to implement changes in the regulatory scheme that are beneficial to the nation's economic and environmental health.

Sincerely,

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